UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KAVIN MAURICE RHODES, Plaintiff, v. R. SAILOR, et al., Defendants.	NO. CV 08-6419-DDP(E) ORDER RE DEFENDANT ANTELOPE VALLEY HOSPITAL'S MOTION TO DISMISS AND/OR MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION TO STRIKE

BACKGROUND

Plaintiff, a state prisoner proceeding pro se, filed this action for damages on October 1, 2008. Plaintiff alleges that prison officials at Plaintiff's former place of incarceration, the California State Prison at Lancaster ("Lancaster"), and health care providers at the Antelope Valley Hospital failed to provide adequate treatment for an injury to Plaintiff's hand. Defendants are: (1) Lancaster medical technical assistant R. Sailor; (2) Lancaster orthopedic surgeon Pierre S. Hendricks; (3) Lancaster correctional sergeant Priest; (4) Antelope

Valley Hospital physicians John Lynn and William Gregory; (5) Antelope Valley nurse K. Hansen; (6) two Antelope Valley Hospital employees sued as fictitious "John Doe" Defendants; and (7) the Antelope Valley Hospital.

On November 18, 2008, Defendant "Antelope Valley Healthcare District, d.b.a. Antelope Valley Hospital" ("Defendant") filed a "Motion to Dismiss and/or for Judgment on the Pleadings" ("Motion"), pursuant to Rules 12(b)(1), 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, accompanied by declarations and an exhibit consisting of a copy of the Complaint. On December 8, 2008, Plaintiff filed an Opposition to the Motion. On December 10, 2008, Defendant filed a Reply.

SUMMARY OF PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that, on August 20, 2006, prison officials transported Plaintiff to Defendant Antelope Valley Hospital for treatment of an injury to Plaintiff's right hand (Complaint, ¶ 11, pp. 4-5). There, Plaintiff allegedly received X-rays (id., ¶ 12, p. 5). Either Defendant Lynn or Defendant Gregory allegedly told Plaintiff that Plaintiff assertedly had sustained sprains to Plaintiff's wrist and fourth finger (id.). Defendant Hansen and "the doctors" allegedly applied a cast which completely covered Plaintiff's right hand, including Plaintiff's fourth and fifth fingers (id., ¶ 13, p. 5).

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Plaintiff alleges that, as Plaintiff was leaving the hospital, Defendant Lynn or Defendant Gregory told Defendant Priest that Plaintiff should receive follow-up care at the prison (id., ¶ 14, p. 5). Plaintiff alleges he never received such follow-up care (id.).

Plaintiff alleges that, on August 24, 2006, Plaintiff received a letter from Defendant Lynn assertedly stating that the Radiology Department had noted a "discrepancy" and that Plaintiff's X-ray showed a "possible faint fracture" of the fifth finger of Plaintiff's right hand (id., ¶ 17, pp. 5-6). Plaintiff allegedly showed the letter to Defendant Sailor, who assertedly began to shout at Plaintiff, accusing Plaintiff of "whining," and stating that he, Sailor, had suffered a similar injury (id., ¶¶ 19-20, p. 5). Plaintiff allegedly filed an appeal to which Plaintiff received no response, and allegedly unsuccessfully sought help from other prison officials (id., ¶¶ 21-22, pp. 6-7). Plaintiff alleges that Defendant Hendricks finally saw Plaintiff on October 26, 2006 (id., ¶ 25, pp. 7-8). Plaintiff alleges that, when the cast was removed, Plaintiff assertedly discovered that his fifth finger had been broken and had healed inside the cast "severely deformed" (id., ¶¶ 26-27, p. 8). Plaintiff alleges that the alleged deformity makes it difficult to write (id., ¶ 27, p. 8).

Defendant Hendricks allegedly scheduled Plaintiff for corrective surgery, but Plaintiff assertedly declined the surgery, supposedly believing it would interfere with Plaintiff's ability to meet deadlines in a case Plaintiff was prosecuting (id., ¶¶ 28-39, p. 8). On February 9, 2007, prison doctors not named as Defendants allegedly told Plaintiff that the corrective surgery was elective because it

could be done at any time (id., ¶ 32, p. 9).

The Complaint contains ten Claims for relief, styled "causes of action." Plaintiff names Defendant Antelope Valley Hospital as a Defendant only as to Claims Nine and Ten. Claim Nine, titled "Professional Negligence," alleges that Defendant is a state actor under contract with the State of California to provide medical services to indigent prisoners, and that Defendant Hansen negligently misapplied the cast to Plaintiff's hand (Complaint, p. 13). Claim Ten, also titled "Professional Negligence," alleges that Defendant Antelope Valley Hospital negligently failed to obtain Plaintiff's informed consent to treatment (id.).

PARTIES' CONTENTIONS

Defendant contends the Court lacks jurisdiction over Plaintiff's state tort claims against Defendant because Plaintiff allegedly has failed to comply with the claims presentation requirements of California's Government Claims Act, California Government Code section 900 et seq.[1] In support of this argument, Defendant submits the declaration of Troy A. Schell, Defendant's Vice-President and General Counsel ("Schell Dec."). Mr. Schell states that Defendant is a "healthcare district" (Schell Dec., ¶ 2). Mr. Schell further states that he has reviewed Defendant's records and that those records do not

[1] The California Supreme Court has ruled that the name "Government Claims Act" is a more appropriate title for the statute than the traditional appellation "Tort Claims Act." City of Stockton v. Superior Court, 42 Cal. 4th 730, 741-42, 68 Cal. Rptr. 3d 295, 171 P.3d 20 (2007).

indicate that Defendant received any claim from Plaintiff submitted pursuant to the California Government Claims Act (Schell Dec., ¶ 5).

Defendant also contends that the claims against Defendant are barred by the statute of limitations applicable to professional negligence actions against health care providers set forth in California Code of Civil Procedure section 340.5.[2] Defendant finally asserts that the Court should strike Claim Ten as allegedly duplicative of Claim Nine, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.[3]

Plaintiff contends that he did comply with the claims presentation requirements of the California Government Claims Act, and has submitted exhibits in support of that contention. Plaintiff also contends that the Complaint asserts a federal civil rights claim against Defendant, and that the California Government Claims Act does

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[2] California Code of Civil Procedure section 340.5 provides in pertinent part:

> "In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person."

[3] Defendant's Notice of Motion does not mention Rule 12(f) or a motion to strike.

not apply to any such claim.[4] Plaintiff further argues that the claims against Defendant are timely because the two-year limitations provision of California Code of Civil Procedure section 335.1 allegedly applies,[5] and contends that proper application of accrual and filing principles allegedly render the claims against Defendant timely. Plaintiff also alleges an entitlement to equitable tolling.

DISCUSSION

I. Governing Legal Standards

"To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), a complaint generally must satisfy only the minimal notice pleading requirements of [Federal] Rule [of Civil Procedure] 8(a)(2)." Porter v. Jones, 319 F.3d 483, 494 (9th Cir. 2003). "Federal Rule of Civil Procedure 8(a)(2) requires only a 'short and plain statement of the claim showing that the pleader is entitled to relief.'" Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007). "In addition, when ruling on a defendant's motion to dismiss,

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[4] The Court does not construe the Complaint to allege any federal civil rights claim against Defendant, however. Claims Nine and Ten, the only claims alleged against Defendant, purport to allege only claims of "professional negligence." Plaintiff asserts only one federal civil rights claim, for an alleged Eighth Amendment violation, and Plaintiff alleges that claim only against Defendant Sailor (see Complaint, p. 10). The remainder of Plaintiff's claims are expressly alleged as state law claims.

[5] California Code of Civil Procedure section 335.1 provides a two-year statute of limitations for: "An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another."

a judge must accept as true all of the factual allegations contained in the complaint." Id. (citations omitted). "Generally a court may not consider material beyond the complaint in ruling on a Fed.R.Civ.P. 12(b)(6) motion." Intri-Plex Technologies, Inc. v. Crest Group, Inc., 499 F.3d 1048, 1052 (9th Cir. 2007) (citation and footnote omitted).[6] "A document filed pro se is to be liberally construed [citation], and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 127 S. Ct. at 2200 (citations omitted).

Judgment on the pleadings is proper if the moving party "clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that [the moving party] is entitled to judgment as a matter of law." Hal Roach Studios v. Richard Feiner and Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1989). Where, as here, the motion for judgment on the pleadings is used to raise the defense of failure to state a claim, the motion is governed by the standards used to assess the sufficiency of the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. McGlinchy v. Shell Chemical Co., 845 F.2d 802, 810 (9th Cir. 1988); Ludahl v. Seaview Boat Yard, 869 F. Supp. 825, 826 (W.D. Wash. 1994); see also Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co., 132 F.3d 526, 528 (9th Cir. 1997) ("A judgment on the pleadings is properly granted when, taking all allegations in the pleading as true, the moving party

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[6] A court may consider matters properly the subject of judicial notice, see Intri-Plex Technologies, Inc. v. Crest Group, Inc., 499 F.3d at 1052, and exhibits attached to the complaint, see Hal Roach Studios v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

is entitled to judgment as a matter of law.") (citation and internal quotations omitted). As a general rule, the court may not consider material beyond the pleadings without converting the motion to a motion for summary judgment. See Fed. R. Civ. P. 12(c); Heliotrope General, Inc. v. Ford Motor Co., 189 F.3d 971, 979-80 (9th Cir. 1999); Qwest Communications Corp. v. City of Berkeley, 208 F.R.D. 288, 291 (N.D. Cal. 2002).

Defendant's Motion is not styled a motion for summary judgment, and the Court declines to convert the Motion into a motion for summary judgment. Therefore, the Court will apply the standards applicable to motions to dismiss and motions for judgment on the pleadings, set forth above, and will not consider the purported evidence submitted by the parties. However, the Court may consider the allegations contained in Plaintiff's Opposition in deciding whether to grant leave to amend. See Broam v. Brogan, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003).

II. Plaintiff Has Failed to Allege Compliance with California's Government Claims Act.

Under California law, in order to allege a state tort claim against a public entity or public employee, a plaintiff must allege compliance with the presentment of claims requirements of the California Government Claims Act. See Cal. Gov't Code §§ 945.4, 950.2; Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 627 (9th Cir. 1988). "Before a civil action may be brought against a public entity, a claim must first be presented to the public entity

and rejected." Ocean Servs. Corp. v. Ventura Port Dist., 15 Cal. App. 4th 1762, 1775, 19 Cal. Rptr. 2d 750 (1993); Cal. Gov't Code § 945.4; see also Brown v. Yates, 2008 WL 928119, at *3 (E.D. Cal. Apr. 4, 2008), adopted, 2008 WL 2915085 (E.D. Cal. July 25, 2008) ("Presentation of a written claim and action on, or rejection of, the claim are conditions to suit.") (citations omitted). Claims for personal injury and property damage must be presented within six months after accrual. See Cal. Gov't Code § 911.2(a); City of Stockton v. Superior Court, 42 Cal. 4th 730, 738, 68 Cal. Rptr. 3d 295, 171 P.3d 20 (2007). "[F]ailure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." City of Stockton v. Superior Court, 42 Cal. 4th at 738 (citation and internal quotations omitted).

Timely claims presentation is an "element of the plaintiff's cause of action." Shirk v. Vista Unif. Sch. Dist., 42 Cal. 4th 201, 209, 64 Cal. Rptr. 3d 210, 164 P.3d 630 (2007) (citation omitted). A plaintiff "must allege facts demonstrating or excusing compliance with the claim presentation requirement." State v. Superior Court (Bodde), 32 Cal. 4th 1234, 1243, 13 Cal. Rptr. 3d 534, 90 P.3d 116 (2004). California courts "employ a test of substantial compliance rather than strict compliance in evaluating whether a plaintiff has met the demands of the claims statutes." Life v. County of Los Angeles, 227 Cal. App. 3d 894, 899, 278 Cal. Rptr. 196 (1991).

The claims presentation requirements of the California Government Claims Act are not jurisdictional. See State v. Superior Court (Bodde), 32 Cal. 4th 1234, 1239 n.7, 13 Cal. Rptr. 3d 534, 90 P.3d 116

(2004) (noting that California Supreme Court has "long held" that failure to comply with the claims presentation requirement does not divest court of jurisdiction over claim against a public entity, citing County of Santa Clara v. Superior Court, 4 Cal. 3d 545, 550-51 94 Cal. Rptr. 158, 483 P.2d 774 (1971)). Therefore, to the extent Defendant seeks dismissal of the claims against it on the ground that the Court lacks subject matter jurisdiction over those claims, Defendant's Motion lacks merit.[7]

In Martell v. Antelope Valley Hospital Medical Center, 67 Cal. App. 4th 978, 79 Cal. Rptr. 2d 329 (1998), the California Court of Appeal stated that Defendant is "a district hospital covered by the California Tort Claims Act." Id. at 980 (citation omitted). The Complaint does not allege that Plaintiff complied with the claims presentation requirements of the California Government Claims Act with respect to his claims against Defendant. Therefore, the claims against Defendant must be dismissed. However, because it appears from Plaintiff's Opposition that Plaintiff may be able to allege facts showing compliance with the claims presentation requirements of the California Government Claims Act, the Court will grant leave to amend. See Broam v. Brogan, 320 F.3d at 1026 n.2.[8]

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[7] Defendant does not challenge the Court's jurisdiction over the claims against it on any other ground. See generally 28 U.S.C. § 1367.

[8] The Court expresses no opinion regarding whether Plaintiff will be able to allege, or prove, compliance with the claims presentation requirements of the California Government Claims Act.

III. Defendant's Statute of Limitations Argument Lacks Merit.

Under the California Government Claims Act, an action against a public entity for which a claim is required to be presented must be commenced not later than six months after notice of rejection of the claim is personally delivered or deposited in the mail, or, if no such notice was provided, within two years after accrual. Cal. Gov't Code § 945.6(a). "Suits against a public entity are governed by the specific statutes of limitations provided in the Government Code, rather than the statute of limitations which applies to private defendants." Martell v. Antelope Valley Hospital Medical Center, 67 Cal. App. 4th at 981 (citation and internal quotations omitted). Therefore, in a medical malpractice lawsuit against a public entity, the six-month statute of limitations contained in California Government Code section 945.6(a) applies, rather than other general statutes of limitations, including the statute of limitations for negligence actions against health care providers contained in California Code of Civil Procedure section 340.5. See Martell v. Antelope Valley Hospital Medical Center, 67 Cal. App. 4th at 981-85; Anson v. County of Merced, 202 Cal. App. 3d 1195, 1202, 249 Cal. Rptr. 457 (1988). Consequently, Defendant's argument that California Code of Civil Procedure section 340.5 bars Plaintiff's claims against Defendant lacks merit.[9]

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[9] In light of this conclusion, the Court need not, and does not, consider Plaintiff's various arguments that his claims against Defendant are timely, including arguments regarding the date of accrual, the date the Complaint should be deemed to have been filed, and equitable tolling principles.

Section 945.6(a) of the California Government Code conceivably might bar Plaintiff's claims, but Defendant does not so argue. Moreover, the Court is granting Plaintiff leave to amend to attempt to allege compliance with the claims presentation requirements of the California Government Claims Act. Therefore, the Court need not, and does not reach the issue of whether Plaintiff can allege or prove that the claims against Defendant are timely under section 945.6(a) of the California Government Code.

IV. Defendant's Motion to Strike Claim Ten Lacks Merit.

Defendant contends that Claim Ten is duplicative of Claim Nine and subject to a motion to strike under Rule 12(f) of the Federal Rules of Civil Procedure. As noted above, Defendant's Notice of Motion does not state that Defendant makes any Motion to Strike. Moreover, although both Claims Nine and Ten allege negligence, they do not appear to be necessarily redundant. Claim Nine alleges Defendant is liable because of the asserted negligence of a nurse employee, while Claim Ten alleges that Defendant is liable because of the alleged failure of unidentified medical personnel to obtain Plaintiff's informed consent. In any event, "[m]otions to strike are viewed with disfavor, and will usually be denied unless the allegations in the pleading have no possible relation to the controversy, and may cause prejudice to one of the parties." Corrections USA v. Dawe, 504 F. Supp. 2d 924, 938 (E.D. Cal. 2007). "Mere redundancy is insufficient to support a motion to strike; the movant must demonstrate that prejudice would result if the offending material remained in the pleadings." Ross-Simons of Warwick, Inc. v.

Baccarat, Inc., 182 F.R.D. 386, 398 (D.R.I. 1998) (citations omitted); see also Saye v. Old Hill Partners, Inc., 478 F. Supp. 2d 248, 278 (D. Conn. 2007). Defendant has not shown that the allegations in Claim Ten are unrelated to the controversy, and has not shown that any prejudice would occur if those allegations remain in the Complaint. For these reasons, Defendant's Motion to Strike Claim Ten lacks merit.

ORDER

Defendant's Motion is granted in part and denied in part. The Complaint is dismissed with leave to amend. If Plaintiff still wishes to pursue this action, he is granted thirty (30) days from the date of this Memorandum and Order within which to file a First Amended Complaint. The First Amended Complaint shall be complete in itself. It shall not refer in any manner to any prior complaint. The First Amended Complaint should not attempt to add additional parties without leave of Court. See Fed. R. Civ. P. 21. Failure to file timely a

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First Amended Complaint may result in the dismissal of this action. Defendant's Motion is otherwise denied.

IT IS SO ORDERED.

DATED: 8-17-09, 2009.

DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE

Presented this 8th day of January, 2009, by

CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE